IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1526 OF 2006

Suresh D. Bhadane .... Petitioner
Vs.
Appasaheb S. Hattargi & Ors. .... Respondents

Sarvasri H.G. Wakshe i/b G.N. Salunke
for the Petitioner.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

P.C:

Heard. The petitioner challenges the order dated 16-12-2005 passed by the trial Court in R.C.Suit No.159 of 2005. By the impugned order the trial Court has dismissed the application filed by the petitioner for appointment of Commissioner. The application has been rejected on the ground that Court Commissioner cannot be appointed to collect evidence for the parties. Undisputedly, the application was filed to ascertain the factual situation as on today in the suit property as there are rival contentions sought to be raised by the plaintiff and the defendants in respect thereof. Obviously, each party to the proceedings has to establish the facts as pleaded by each of the parties to the proceedings. In order to enable to establish the facts alleged by the parties, the parties cannot seek

the assistance of the Court by way of appointment of Commissioner to collect evidence. The provisions of Order 26, Rule 9 of the C.P.C. are very clear in that regard, as rightly observed by the trial Court. Being so, there is no jurisdictional error committed by the Court below in dismissing the application for appointment of Commissioner. Undisputedly, the parties are yet to lead their evidence in the matter. Being so, there is no case for interference in the impugned order in writ jurisdiction. The petition is, therefore, rejected.

(R.M.S. Khandeparkar, J.)

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